

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

FILED

AUG 26 2013

CRIMINAL ACTION NO. 85-2690-RGT

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY DEPUTY

UNITED STATES OF AMERICA,

PLAINTIFF,

v.

CIV-13-914

C

BRIAN PATRICK SPENSER PERCEVAL,

DEFENDANT-PETITIONER.

PETITION FOR A WRIT OF
ERROR CORAM NOBIS

COMES NOW DEFENDANT-PETITIONER
BRIAN PATRICK SPENSER PERCEVAL, IN HIS OWN
AND PROPER PERSON, AND PURSUANT TO TITLE
28 UNITED STATES CODE § 1651 HEREBY
PETITIONS THIS HONORABLE COURT TO GRANT
A WRIT OF ERROR CORAM NOBIS IN THE ABOVE
ENTITLED MATTER.

IN SUPPORT THEREOF DEFENDANT-
PETITIONER STATES AS FOLLOWS:

FACTS

IN 1985 THE DEFENDANT-PETITIONER WAS CONVICTED IN THIS COURT FOR POSSESSION OF AN OBJECT THAT MAY BE USED AS A WEAPON.

TITLE 18 U.S.C. §1791(a)(2). EMPHASIS ADDED. DEFENDANT-PETITIONER WAS THEN SENTENCED BY YOUR HONOR TO A ONE YEAR TERM OF IMPRISONMENT, TO RUN CONSECUTIVELY TO THE TEN YEAR TERM HE WAS SERVING AT THE TIME FOR BANK LARCENY. THEREAFTER APPEAL WAS TAKEN AND THE CONVICTION AFFIRMED ON OCT. 17, 1986.

U. S. v. PERCEVAL, 803 F.2nd 601 (10th CIR. 1986).

ON NOV. 10, 1986 CONGRESS REVISED THE STATUTE UNDER WHICH HE WAS CONVICTED BY REPLACING THE TERM "MAY BE" WITH "DESIGNED OR INTENDED". PUBLIC LAW 99-646, §52(a), 100 STAT. 3606. FOLLOWING THIS DEFENDANT-PETITIONER HIMSELF FILED A FURTHER APPEAL TO THE UNITED STATES SUPREME COURT, WHICH WAS DENIED. ✓

✓
DEFENDANT-PETITIONER DOES NOT HAVE THE CASE NUMBER BUT BELIEVES IT WAS DENIED AS UNTIMELY, OR THAT THE CHANGES MADE TO §1791 WERE NOT RETROACTIVE.

DEFENDANT-PETITIONER HAS FULLY SERVED HIS TERMS OF IMPRISONMENT, PAID ALL FINES, AND HAS HAD SOME OF HIS CIVIL RIGHTS RESTORED (SUCH AS THE RIGHT TO VOTE AND SERVING ON A JURY), IS NOW 66 YEARS OLD AND RETIRED ON A SMALL PENSION.

ON MAY 9, 2012 DEFENDANT-PETITIONER WAS ARRESTED AND CHARGED WITH A 2ND DEGREE ASSAULT, A FELONY. SEE EXHIBIT 'A'. A FURTHER CHARGE, ANOTHER FELONY, OF INJURY TO A VICTIM, WAS ALSO ADDED. FOLLOWING A PROTRACTED PERIOD OF NEGOTIATIONS DEFENDANT-PETITIONER EVENTUALLY PLED GUILTY TO AN ATTEMPTED ASSAULT, A 3RD CLASS MISDEMEANOR.

HOWEVER, PRIOR TO THE PLEA AGREEMENT WAS REACHED THE ARAPAHOE COUNTY DISTRICT ATTORNEY WAS INTENT ON FILING AGAINST HIM UNDER COLORADO'S HABITUAL OFFENDERS ACT, CITING THIS CONVICTION AS ONE OF THE PREDICATE FELONIES FOR SUCH. THAT MEANT HE WAS FACING A POSSIBLE TERM OF 48 YEARS IN PRISON. 6 YEARS FOR EACH FELONY, RUN CONSECUTIVELY, MULTIPLIED BY 4 AS AN HABITUAL OFFENDER. C.R.S.A. §20.14.

GROUND FOR WRIT

1

DEFENDANT-PETITIONER ARGUES AT TRIAL, AND ON APPEAL, THAT THE STATUTE UNDER WHICH HE WAS CHARGED AND CONVICTED REQUIRES INTENT. AT TRIAL NO INTENT, OF ANY KIND, WAS OFFERED BY THE GOVERNMENT.

IT IS IRONIC THAT CONGRESS AMENDED THE STATUTE SOME 24 DAYS AFTER THE CONVICTION WAS AFFIRMED. SEE, U. S. V. RODRIGUEZ, 45 FD. 3RD 302 (9TH CIR. 1995), REVERSED AND REMANDED, (REQUIRES PROOF OF SPECIFIC INTENT ON PART OF DEFENDANT).

HAD DEFENDANT-PETITIONER BEEN TRIED UNDER THE AMENDED VERSION OF §1791 THE GOVERNMENT COULD NOT HAVE SHOWN ANY INTENT, MUCH LESS SPECIFIC, AS THERE WAS NONE.

2

DEFENDANT-PETITIONER HAS SERVED THE SENTENCE IMPOSED BY THIS COURT YET, TO THIS DAY, IS SUBJECT TO ENHANCED PENALTIES

4

FOR ANY SUBSEQUENT OFFENCE.

TO BE EXPOSED TO SUCH PENALTIES FOR AN OFFENCE WHICH WAS NOT VIOLENT, AND WHICH CONGRESS AMENDED TO INCLUDE WHAT DEFENDANT-PETITIONER HAS ALWAYS ASSERTED TO BE LACKING, IS NOT COMPATIBLE WITH THE INTERESTS OF JUSTICE AND SERVES NO USEFUL PURPOSE.

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, THE DEFENDANT-PETITIONER PRAYS THAT THIS HONORABLE COURT GRANT THE WRIT AND EXPUNGE THE CONVICTION IN THIS CASE.

RESPECTFULLY SUBMITTED THIS 1ST
DAY OF AUGUST, 2013.

Brian Patrick Spenser Perceval

BRIAN PATRICK SPENSER PERCEVAL
DEFENDANT-PETITIONER PRO SE
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DENVER, CO 80202-1434
TEL. 720-329-4608

-Wants and Warrants Maintenance-----WW0110S1-
 Warrant # . . . : 0000049903 Re-Issue Warrant: N (Y/N) Change
 Name : PERCEVAL, BRIAN, PATRICK SPENCE,
 Warrant Date : 2062012 + Warrant Category: CANC + CANCELLED
 Warrant Type : FEL + FELONY Warrant Action : ARR + ARREST
 Offense/Viol : S + 18-3-203 + 13A +
 -Warrant Charge Inquiry-----WW0175S2-
 ORI # . . : C00030000 ACSO Inquiry
 Warrant #: 0000049903
 Defendant: PERCEVAL, BRIAN, PATRICK SPENCE,
 Sequence# . . : 001
 Occurred Date : Occurred Time . :
 Offense/Viol : S 18-3-203 13A
 Offense Desc : ASSAULT IN THE 2ND DEGREE - ALL
 Police ORI# . . : APD Police Case # . : 2011 - 00040633
 Court ORI # . : C0003015J Court Case # . : D0032012CR000221
 Bond Amount . : 50,000.00 Bond Type . . . : C/S C/S
 F24=Documents
 -F3=Exit F12=Cancel-----

"EXHIBIT A"

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT A TRUE AND CORRECT COPY OF DEFENDANT-PETITIONER'S PETITION FOR A WRIT OF ERROR CORAM NOBIS, AND APPLICATION TO PROCEED IN FORMA PAUPERIS, WAS MAILED, POSTAGE PRE-PAID TO COUNSEL FOR PLAINTIFF AT THE FOLLOWING ADDRESS:

UNITED STATES ATTORNEY
WESTERN DISTRICT OF OKLAHOMA
210 WEST PARK AVENUE
SUITE 400
OKLAHOMA CITY
OK 73102

ON THE 22nd DAY OF AUGUST, 2013

Brian Patrick Spencer Perieval
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Room 1210
OKLAHOMA CITY
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AUG 26 2013

Clerk, U.S. District Court
WEST.DIST.OF OKLA.

